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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/585,788 06/05/00 KADE

B RE-001

EXAMINER

IM52/1003

CARL C KLING
P O BOX 305
HAWTHORNE NY 10532-0305

TRAN. LIEN, T

ART UNIT

PAPER NUMBER

9

1761
DATE MAILED:

10/03/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Advisory Action

Application No. 09/585,788	Applicant(s) Brown et al.
Examiner Lien Tran	Art Unit 1761



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED Aug 31, 2001 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

THE PERIOD FOR REPLY [check only a) or b)]

a) The period for reply expires 3 months from the mailing date of the final rejection.

b) In view of the early submission of the proposed reply (within two months as set forth in MPEP § 706.07 (f)), the period for reply expires on the mailing date of this Advisory Action, OR continues to run from the mailing date of the final rejection, whichever is later. In no event, however, will the statutory period for the reply expire later than SIX MONTHS from the mailing date of the final rejection.

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. A Notice of Appeal was filed on _____ . Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2. The proposed amendment(s) will be entered upon the timely submission of a Notice of Appeal and Appeal Brief with requisite fees.

3. The proposed amendment(s) will not be entered because:

- (a) they raise new issues that would require further consideration and/or search. (See NOTE below);
- (b) they raise the issue of new matter. (See NOTE below);
- (c) they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: _____

4. Applicant's reply has overcome the following rejection(s):

5. Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claim(s).

6. The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because:
the argument is not found to be persuasive for the reasons of record. Also, see attached paper.

7. The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

8. For purposes of Appeal, the status of the claim(s) is as follows (see attached written explanation, if any):

Claim(s) allowed: noneClaim(s) objected to: noneClaim(s) rejected: 1-4 and 8

9. The proposed drawing correction filed on _____ a) has b) has not been approved by the Examiner.

10. Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.

11. Other: _____

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1. The reissue oath/declaration filed with the response of August 31, 2001 is defective because it does not contain the signature of the inventor " Robert W. Brown".
2. Claims 1-4 and 8 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the declaration is set forth in the discussion above in this Office action.

3. Claims 1-3 are rejected under 35 U.S.C. 251 as being broadened in a reissue application filed outside the two year statutory period. The reason is as set forth in paragraph 5 of the previous office action.
4. The new matter objection and rejection as set forth in paragraphs 7-8, 10 in the previous office action are hereby withdrawn due to the amendment filed August 31, 2001.
5. None of the claim amendments complies with rule 1.121(b). Applicant needs to begin with the patent claims and makes the necessary changes using brackets and underlining. All subject matter being added to the patent claims must be underlined and all subject matter being deleted from the patent claims must be placed between brackets. Claims added to the patent must be underlined in their entirety.
6. The 112 second paragraph rejection of claims 3 and 8 is maintained for the same reason set forth in paragraph 13 of the previous office action.

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7. Claims 1-4 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over the recipe for English muffins in the Boston globe for the same reason set forth in paragraph 17 of the previous office action.

8. In the response filed August 31, 2001, applicant argues claims 1-3 are not broadened. Applicants gives the following reasons: Claim 1 and its dependent claim 2 originally stated "proofing said second-rise bagel dough individual bun portions in a warm environment for a third period of time of approximately three hours". Applicant states this was slightly non-grammatical and there was an intent to simplify in changing to " proofing said second rise bagel dough individual bun portions in a warm environment for a proof time much greater than the sum of rise times in steps c and e. What applicant intended to do and what applicant actually did are two different issues. It can not be determine what applicant intended to do. The actual fact is that the claims in the patents recite a limitation of "a third period of time of approximately three hours". This limitation is not in the claims in the instant application. The omission of the limitation broadens the claims which is not permitted because the application was filed outside the two year statutory period. As stated in the previous office action, a certificate of mailing does not have any effect on the filing of the application to get a filing date.

9. In the response, applicant also states claim 3 has been amended to the exact wording of the original patent. This is not found to be accurate. Claim 3 does not have the exact wording of the original patent and applicant does address the issue raised in the rejection.

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10. In the response, applicant also submitted a declaration in an attempt to over the rejection. The declaration states bagel, pita bread and English muffin are separate items which are readily recognize. The examiner recognizes these are separate items; however, the examiner fails to see how this is relevant to the issues in the application. As to the statements regarding the 112 first paragraph rejection, they will not be addressed because the 112 first paragraph rejection is withdrawn in this office action. On page 4 of the declaration, applicant states the process activity patterns in bagel dough and English muffin batter are quite different. This might be true; however, the claims do not define the difference. The prior art rejection is based only on what is being claimed. The claims are directed to a process for preparing a baked product which includes the steps of preparing a dough, kneading the dough, rising the dough for 3 times in which the third rising time is greater than the sum of the first and second rising times. The recipe for muffin discloses this sequence of steps. As states in paragraph 9 of the declaration, batter and dough are similar. In paragraph 10, the declaration states the examiner appears to be seeking fixed periods of rise time such as can be measured in minutes. The fixed periods of rise time is only an issue in the broadening of the claims which is not permitted because the application was filed outside the 2 year statutory period. It is not an issue in the prior art rejection. The discussion in the declaration about the variation is rising time does not address the issue of broadening the claims. On paragraph 11, the declaration discusses about pancake batter; this discussion is not germane to the issue at hand because the prior art used is not a pancake batter. The declaration states a reasonable dictionary definition of the term "batter" is "a thin mixture of flour, eggs and milk or

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water beaten together and used in cooking". According to the New Riverside University Dictionary(Copyright 1984, 1988), batter is define as " a thick beaten liquid mixture, as of flour, milk and eggs used in cooking". Thus, as shown by the two definitions, the meaning and what is considered a batter vary. The New Riverside University also defines dough as " a thick, soft mixture of flour or meal, liquids and various dry ingredients that is baked". From the meaning, dough and batter do not differ and the claims do not have limitations which differentiate between a dough and a batter. Paragraph 13 of the declaration states yeast-risen breads made by letting dough rise and by letting batter bubble may have different tastes and different textures. It is not known what yeast-risen breads the declaration is referring to. There are also no comparative showing of the differences.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is (703) 308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

September 20, 2001


LIEN TRAN
PRIMARY EXAMINER
